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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 445

UNITED STATES OF AMERICA, PETITIONER

v.

STANLEY J. PATRYAS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit, entered in the above entitled case on June 21, 1937.

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 57–60) is reported in 90 F. (2d) 715.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 21, 1937. (R. 60.) The juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, in a suit for disability benefits under a contract of United States Government life insurance, the Government is liable where it is shown that total permanent disability occurred prior to the reinstatement and conversion of the insurance.

2. Whether the Circuit Court of Appeals erred in holding (if it did so hold) that the omission of portions of the policy from the bill of exceptions precluded consideration of the Government's motion for a directed verdict.

3. Whether, in any event, the judgment of the District Court should not have been reversed by the court below upon the record proper, apart from the bill of exceptions.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations involved are printed in the Appendix, *infra,* pp. 19–26.

STATEMENT

Stanley J. Patryas, the respondent, brought this suit originally in January, 1932, to recover total and permanent disability benefits in monthly installments under a contract of war risk term insurance in the sum of $10,000 issued to him while in the military service of the United States

between October 5, 1917, and July 29, 1919. (R. 2–5.) In April, 1936, he filed an amended complaint containing two counts. The first was similar in substance to the original complaint (R. 11–13) and was later abandoned by stipulation (R. 20). By the second count, on which the case was tried, respondent sought to recover total and permanent disability benefits, together with unearned premiums, under a five-year convertible term policy of United States Government life insurance, to which his insurance was alleged to have been converted in July, 1927. (R. 13–15.) It was alleged in this count, and denied by the Government's answer, that he had become totally and permanently disabled on or prior to January 26, 1931, while the subsequent policy was in force. (R. 9, 14.)

It was established by admission in the Government's answer, stipulation of the parties, or by undisputed evidence, that the original war risk term insurance contract was issued to the respondent on January 31, 1918, and lapsed for nonpayment of premiums August 31, 1919; that on June 28, 1927, it was reinstated and converted into the five-year convertible term policy (effective July 1, 1927) which in turn lapsed for nonpayment of the premium due July 1, 1932; and that the respondent filed a claim for permanent and total disability benefits under the latter policy on January 6 (R. 20), or May 2, 1931 (R. 21).

At the close of the evidence, the Government moved the court to direct a verdict in its favor upon the grounds: (1) that respondent failed to adduce substantial evidence that he "became" totally and permanently disabled while his contract of insurance was in force, and (2) that if there were proof of total and permanent disability, such disability had existed since 1924, and that the policy in suit did not "come into being" until 1927. The court thereupon reserved its ruling upon the point relating to the existence of total and permanent disability prior to the inception of the policy (R. 44), and acceded to the request of counsel for the Government that the record should show an exception in the event the motion was overruled. The bill of exceptions recites that the motion was overruled, and that the Government excepted to this ruling. (R. 45.) It also recites that there was a similar ruling and exception after the verdict. (R. 48.)[1]

The court instructed the jury that if respondent became totally and permanently disabled after

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[1] The Circuit Court of Appeals, presumably because of its decision upon other questions of law, did not decide the question as to whether the evidence supported the Government's motion for a directed verdict. For that reason, and because the question as to which review is here sought was otherwise preserved, the evidence is not reviewed herein. If this Court should determine that the Circuit Court of Appeals was in error and a decision upon the evidence in connection with the Government's motion for a directed verdict should be deemed necessary, it is assumed that the case will be remanded to the Circuit Court of Appeals for that purpose. Cf. *Earwood* v. *United States*, 294 U. S. 695.

June 1, 1932, he could not recover because the policy lapsed at that time[2] (R. 47), but refused the request of counsel for the Government for a further instruction to the effect that respondent would also be unable to recover if he became totally and permanently disabled before "July 27th, 1927."[3] The trial judge stated, in substance, that he had not had an opportunity to study the policy on this point; that he would therefore ask the jury simply to fix the date of permanent and total disability and would himself later determine any question of law which might be presented by their finding. Counsel for the Government thereupon asked: "May I make my record on that?", and the court replied in the affirmative. (R. 48.) The jury rendered a general verdict in favor of respondent, but fixed "the date" of total and permanent disability "at the latter part of 1924." (R. 48.)

Thereafter, the Government made a motion for judgment on the verdict, and a separate motion for a new trial and in arrest of judgment. These motions were overruled, and exceptions were duly noted. (R. 17–18.) A motion for a new trial and in arrest of judgment was again made, overruled, and excepted to, subsequent to the entry of judgment for the respondent. (R. 19.) The judgment

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[2] The court evidently overlooked the fact that the parties had stipulated July 1, 1932, as the date of lapse. (R. 20.)

[3] Counsel for the Government evidently meant to say June 28, 1927, which was the date of the reinstatement and conversion of the insurance. (R. 20.)

awarded respondent the sum of $3,737.50, representing accrued monthly installments of insurance benefits from January 25, 1931, to May 25, 1936, less the sum of $1,198.49, representing a lien with interest which the Government, in its answer (R. 9), claimed against the policy in the event of a recovery (R. 18–19). An appeal was duly prayed (R. 49), allowed (R. 53), and perfected (R. 49–52, 54–55), and the bill of exceptions settled and signed within time (R. 18, 48, 53). Error was assigned to the trial court's rulings, among others, (a) in refusing to instruct the jury to return a verdict for the Government for lack of substantial evidence that respondent became totally and permanently disabled during the life of the insurance policy sued upon; (b) in refusing the request of counsel for the Government to instruct the jury that if they found from the evidence that the respondent became so disabled prior to June 27[28], 1927, when the policy was issued, they should return a verdict for the Government (Assignment of Errors Nos. 1 and 2, R. 50); and (c) in not holding, as a matter of law, that the respondent was not able to recover because all of his evidence, if taken to be true and if amounting to total and permanent disability, indicated that he was so disabled before the existence of the policy (Assignment of Error No. 5, R. 52).

The Circuit Court of Appeals affirmed the judgment of the trial court. (R. 60.) It was conceded, in the opinion, that the risk assumed by the

policy in suit "did not cover disabilities existing prior to the date of the policy", and that it "covered future total and permanent disability benefits—monthly disability payments accruing after, not before, the issuance of the policy." (R. 60.) The court held, however (concededly contrary to the weight of authority), that the incontestable clause contained in the policy, pursuant to the statute,[4] prevented the Government from denying liability to pay such benefits on the ground that the policy did not cover a disability which occurred prior to its inception. (R. 58.)

It also held that, aside from the incontestable clause, the Government was estopped to set up the defense in question by the acts of its officials. In this connection, it was stated that respondent "who occupied somewhat the status of a ward", reinstated and converted his insurance upon the advice of Government officials who, though not conceding that his disability was then permanent and total, were better informed of his physical and mental condition than the respondent was himself; that he thereby waived the right to claim total and permanent disability benefits under his original contract of war risk term insurance (which expired in 1919), and waived exemption from the payment of premiums subsequent to the date of maturity of that policy, and consented to

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[4] Section 307, World War Veterans' Act, 1924, as amended July 3, 1930, *infra*, pp. 25–26.

the creation of a lien against the new policy to cover such premiums; that the Government was the gainer by reason of such waivers; and that it would be unjust to allow it to take advantage of them and then to repudiate its liability under the contract. (R. 59.) It was also asserted (erroneously—see *supra*, pp. 4, 5) in the opinion, presumably with estoppel in mind, that the Government did not take the position that it was not liable under the policy for a pre-existing disability, until after the jury had found such disability to exist. (R. 58.)

A third ground for affirming the judgment was suggested in the opinion to be the failure of the Government "to include all the evidence in its bill of exceptions." In this connection, it was stated that the policy had been omitted, and particular reference was made to the omission of the incontestable clause. The court stated, however, that it assumed "that the statute defines and fixes the incontestable provisions of the policy in question", and that this omission was therefore not "the sole basis" of its decision. (R. 60.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding the Government liable to pay total and permanent disability benefits under a United States Government life insurance policy, converted from a reinstated contract of war risk term insurance, on account of a total and permanent disability

which had its inception prior to the reinstatement and conversion of the insurance.

2. In holding that the Government was prevented from asserting that the subsequent policy did not cover such a disability by the provisions in Section 307 of the World War Veterans' Act, 1924, as amended July 3, 1930, to the effect that all policies of insurance issued by the Government shall be incontestable from the date of issuance, reinstatement, or conversion.

3. In holding that, aside from the statute, the Government was estopped from asserting such a defense in the instant case by the acts of its officials.

4. In holding (if it did so hold) that the omission of portions of the policy from the bill of exceptions precluded consideration of the Government's motion for a directed verdict.

5. In declining to reverse the judgment of the District Court upon the record proper, apart from the bill of exceptions.

6. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

It is conceded in the opinion of the Circuit Court of Appeals that its decision conflicts with a number of decisions of other Circuit Courts of Appeals and District Courts, in holding that the Government was liable for disability benefits under a policy of insurance, converted from a reinstated contract of war risk term insurance, even though total and per-

manent disability occurred prior to the reinstatement and conversion. It is submitted that the decision of the court below is also in conflict with decisions of this Court, and with certain decisions of Circuit Courts of Appeals in addition to those mentioned in the opinion below.

(1) The court below, while conceding that a disability existing prior to the inception of the policy was not covered by it (R. 60), held, in effect, that the Government is precluded from denying liability to pay benefits under the policy on account of such a disability by the clause in Section 307 of the World War Veterans' Act, 1924, as amended July 3, 1930, *infra*, pp. 25–26, which provides that—

> policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, * * *.

It is submitted, however, that this clause is wholly inapplicable to the case at bar. Its purpose is plainly limited by its terms to preventing the Government from contesting the policy itself by cancellation or otherwise, except upon the grounds specified, and not of preventing it, as insurer, from denying liability under the policy for a loss which, as here, was not covered by the terms of the policy. In other words, it is the "policies" which "shall be

incontestable," not claims made under them. The Government is not here contesting the policy, the issuance and validity of which is undisputed, but rather invoking and relying upon it in defense against a claim not covered by the insurance. To hold that this defense is a contest within the meaning of the statute would necessitate a distortion of the plain and ordinary meaning of the words of the statute. Moreover, this view has been expressly adopted in all of the decisions of Circuit Courts of Appeals involving the clause in question. *United States* v. *Kaminsky*, 64 F. (2d) 735 (C. C. A. 5th); *Hicks* v. *United States*, 65 F. (2d) 517, 520 (C. C. A. 4th); *United States* v. *Stevens*, 64 F. (2d) 853 (C. C. A. 8th). See also *United States* v. *McIver*, 77 F. (2d) 208 (C. C. A. 4th); *United States* v. *Mathis*, 84 F. (2d) 451 (C. C. A. 10th); *United States* v. *Meyer*, 76 F. (2d) 354 (C. C. A. 3rd).

And a similar meaning has been given by the Federal courts to incontestable clauses in commercial policies. *Mack* v. *Connecticut General Life Ins. Co. of Hartford*, 12 F. (2d) 416, 418 (C. C. A. 8th), certiorari denied, 271 U. S. 687; *Sanders* v. *Jefferson Standard Life Ins. Co.*, 10 F. (2d) 143 (C. C. A. 5th); *Flannagan* v. *Provident Life & Accident Ins. Co.*, 22 F. (2d) 136 (C. C. A. 4th); *Hearin* v. *Standard Life Ins. Co.*, 8 F. (2d) 202, 206 (E. D. Ark.); *Wright* v. *Philadelphia Life Ins. Co.*, 25 F. (2d) 514, 515 (E. D. S. C.).

The decision in *United States* v. *Chandler,* 77 F. (2d) 452 (C. C. A. 5th), cited in the opinion of the court below, rested on the court's finding that there was no substantial evidence that the insured was totally and permanently disabled at any time. Upon such evidence, there was, of course, no basis for the application of the court's earlier ruling in the *Kaminsky* case, *supra,* which, with other like cases, was cited in the *Chandler* opinion. We submit that there is no basis for any contention that the *Chandler* decision overruled the court's earlier holding in the *Kaminsky* case.

Neither of its own decisions, cited by the court below in its opinion, affords any support to its position here. *Service Life Ins. Co.* v. *Weinberg,* 81 F. (2d) 359, was a suit by an insurance company to cancel a policy for fraud. It was not disputed that the insurer was contesting the policy within the meaning of the incontestable provision in a local statute. The decision, therefore, has no bearing on the question here presented. *State Mutual Life Ins. Co.* v. *Stapp,* 72 F. (2d) 142, tends more to support the Government's position than that of the court below. There the insurer denied liability under a suicide clause in the policy, and alleged, as a separate defense, that the policy was void for fraud. The court below rejected the former defense on the ground that the suicide did not occur within the time limited by the suicide clause (pp. 144, 145), and held the latter defense barred by the

incontestable clause (p. 146). If the court's view there as to what constitutes a contest of a policy were consistent with the one expressed in its opinion here, there would seem no reason why it should not have held both defenses barred by the incontestable clause.

(2) Furthermore, it is submitted that the Circuit Court of Appeals erred in holding that, aside from the incontestable clause, the Government was estopped from asserting the existence of respondent's total and permanent disability prior to the reinstatement and conversion of his insurance, by the acts of its officials in permitting the insurance to be reinstated and converted. (R. 59.)

It is submitted that respondent suffered no injury or change of position which would justify raising an estoppel.

It is said that in reinstating and converting his insurance, respondent waived his right to claim permanent and total disability benefits under his original war risk term insurance contract. In this respect, the court is plainly in error. Section 307 of the World War Veterans' Act, 1924, as amended July 3, 1930, *infra*, p. 26, contains provisions under which respondent might have claimed total and permanent disability benefits under his original contract, notwithstanding reinstatement or conversion, provided, of course, that he could show that total and permanent disability existed while the former contract was in force. See *United States* v.

Arzner, 57 F. (2d) 488 (C. C. A. 9th), 287 U. S. 470; *United States* v. *Madigan,* 300 U. S. 500.

The court states in its opinion (R. 59):

> The ward consented to the payment of all premiums he had failed to pay since his discharge from service, through the imposition of a substantial lien against the reinstated policy.

The imposition of the lien involved no change in the position of the insured induced by the Government, but was merely a condition of the statute to the reinstatement of insurance. Moreover, the lien would be extinguished if the insured could show a maturity of an earlier contract of insurance. Section 307, World War Veterans' Act, 1924, as amended July 3, 1930, *infra,* p. 26; *United States* v. *Arzner, supra.*

It is true that when the reinstatement of insurance was effected, both the Government and the insured considered his disability at that time to be less than totally and permanently disabling. The Government has at no time changed its view as to the condition of the insured. His claim for benefits was defended upon the ground that he was not totally and permanently disabled at any time. The insured, however, has claimed that he is totally and permanently disabled as the result of a condition found by the jury to have been totally and permanently disabling from a date long prior to reinstatement. The policy clearly does not pro-

vide that the Government shall be liable for such total permanent disability antedating the inception of insurance protection. We submit that the mutual mistake as to the condition of the insured at the time of reinstatement, now established by the jury's verdict, does not provide a basis for estoppel against the Government, whether or not it provides a basis for a claim by the insured for rescission of the contract and a refund of the premiums.[5]

It is further submitted that the opinion of the court below in holding that the Government is estopped to deny liability in this case conflicts with numerous decisions of this Court to the effect that the Government is neither bound nor estopped by the acts or omissions of its officers or agents in entering into an arrangement or agreement contrary to law. *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409; *Sutton* v. *United States,* 256 U. S. 575, 579; *Lee* v. *Munroe,* 7 Cranch. 366, 369; *Filor* v. *United States,* 9 Wall. 45, 49; *Pine River Logging Co.* v. *United States,* 186 U. S. 279,

[5] The incontestable clause of the statute presumably does not apply to the insured himself. However, it may be noted that the insured would be entitled to life insurance protection under the converted policy, since the fact of preexisting total permanent disability at the time of reinstatement would not have avoided maturity by death. Moreover, the premium rate on Government life insurance is based entirely on the American Experience Table of Mortality (see Sec. 300, World War Veterans' Act, *infra*, p. 23) and the disability provisions of the contract provide gratuitous protection.

291. See also *Birmingham* v. *United States,* 4 F. (2d) 508 (C. C. A. 8th); *United States* v. *Loveland,* 25 F. (2d) 447 (C. C. A. 3d) (error confessed for failure to file a written waiver of jury trial, 278 U. S. 665).

As previously indicated, there existed no statutory authority on the part of Government officials to authorize the reinstatement or conversion of respondent's insurance to cover a disability already in existence. In *Wilber Nat. Bank* v. *United States,* 294 U. S. 120, involving a policy similar to the one here, this Court granted a writ of certiorari upon the petition filed by the personal representative of the estate of the insured, which raised the question of whether or not the general rule announced by the cases above cited was subject to modification with reference to such policies, on the ground that they were in the nature of commercial transactions, and hence not entered into by the United States in its sovereign capacity. Upon argument of that case, however, this Court held it unnecessary to decide that question since the claim of estoppel or waiver was not supported by the evidence in any event.

It is again submitted that, as the Government does not issue and administer this insurance for profit and obtains none, it cannot be said in that connection to have stepped down from its position as sovereign and entered the field of commerce. There would therefore seem no justification for

applying a different rule to policies like the one here in suit from that which is applicable to ordinary Government contracts.

(3) It is submitted that the omission of the provisions of the policy referred to in the last paragraph of the opinion of the court below did not, as suggested by it, prevent review of the motion for a directed verdict. All of the provisions having any bearing upon the questions raised on the appeal were included in the bill of exceptions. (R. 20.) The incontestable clause specifically referred to by the court was conceded by it to be contained in Section 307 of the World War Veterans' Act, as amended July 3, 1930, *infra,* pp. 25–26. It is manifest that this provision, as contained in the policy, was properly omitted, since it was inserted under a prior Act (Section 307, World War Veterans' Act, 1924, *infra,* p. 25), differing in terms from the incontestable provisions contained in the amendatory Act of July 3, 1930, which is specifically made retroactive to April 6, 1917, and, therefore, governs here.

(4) But, in any event, the questions here sought to be reviewed were properly presented by the record proper, apart from the bill of exceptions. The terms of the contract, in so far as they are relevant to the questions here presented, may be ascertained from statutory provisions and, when considered in connection with the special finding in the verdict as to the existence of total and permanent disability

at a date prior to the reinstatement and conversion of the insurance, and with the judgment, present the question whether the Government is liable under the insurance contract to pay benefits for such a disability. *United States* v. *McPhee*, 31 F. (2d) 243, 244–245 (C. C. A. 9th). See also *East St. Louis Cotton Oil Co.* v. *Skinner Bros. Mfg. Co.*, 249 Fed. 439, 441–442 (C. C. A. 8th); *Denver* v. *Home Savings Bank*, 236 U. S. 101.

Although error was not specifically assigned to the entry of judgment on the verdict, it is suggested that the point was adequately covered by the assignments of error relating to other rulings involving the same question as that presented by the entry of the judgment. Cf. *United States* v. *Bernays*, 158 Fed. 792, 794 (C. C. A. 8th).

For the reasons stated, it is respectfully submitted that this application for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

SEPTEMBER 1937.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

The first authority to grant war risk insurance was contained in the Act of October 6, 1917, sec. 2 (c. 105, 40 Stat. 398, 409–410), amending the War Risk Insurance Act by adding five new sections, providing in part:

> SEC. 400. That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.
>
> SEC. 401. That such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation, except that those persons who are in the active war service at the time of the publication of the terms and conditions of such contract of insurance may apply at any time within one hundred

and twenty days thereafter and while in such service. Any person in the active service on or after the sixth day of April, nineteen hundred and seventeen, who, while in such service and before the expiration of one hundred and twenty days from and after such publication, becomes or has become totally and permanently disabled or dies, or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his wife from the time of his death and during her widowhood, or to his child, or widowed mother if and while they survive him: *Provided, however,* That not more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid; and in that event the amount of the monthly installments shall be apportioned between them as may be provided by regulations.

SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance * * * shall be payable * * * during total and permanent disability to the injured person, * * *. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for

cash, loan, paid-up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. * * *.

SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, * * *.

Bulletin No. 1 of the Treasury Department, promulgated October 15, 1917, contained the form of the policy to be issued pursuant to the Act of October 6, 1917, providing in part:

(Form of policy for $5,000)

MILITARY AND NAVAL INSURANCE POLICY

* * * * *

THE UNITED STATES OF AMERICA, TREASURY DEPARTMENT, BUREAU OF WAR RISK INSURANCE

Under the authority granted by Congress in an act * * *:

Hereby insures from and after the ------ day of ----------, 19--, John Doe, * * *, conditioned upon the payment of premiums

as herein provided, for the principal amount of $5,000, converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ per cent per annum) payable

To the insured, if he/she, while this insurance is in force, shall become totally and permanently disabled, commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and

To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, * * *:

* * * * *

If the insured became totally and permanently disabled before this policy was applied for, it shall nevertheless be effective as life insurance, but not as insurance against such disability.

* * * * *

Not later than five years after the war this policy, if written request be made to the bureau therefor, accompanied by this policy, will be converted without medical examination into any form of insurance selected from among those that may be prescribed by regulations of the bureau. Such converted insurance will be at net premiums, computed in accordance with the American Experience Table of Mortality and 3½ per cent interest per annum and will provide for cash, loan, paid-up, and extended insurance values.

* * * * *

9. These terms and conditions are subject in all respects to the provisions of such act and of any amendments thereto and of all

regulations thereunder now in force or hereafter adopted.

The World War Veterans' Act, 1924, as amended and in effect when respondent's insurance was reinstated and converted, provides in part as follows:

> SEC. 300. In order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employel in active service under the War Department or Navy Department protection for themselves and their dependents, the United States, upon application to the bureau and without medical examination, shall grant United States Government life insurance (converted insurance) against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided. * * *.
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> The United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at 3½ per centum per annum. * * *. (July 2, 1926, c. 723, sec. 14, 44 Stat. 798–799.)
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> SEC. 301. Except as provided in the second paragraph of this section, not later than July 2, 1927, all term yearly renewable insurance held by persons who were in the military service after April 6, 1917, shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for

the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, five-year level premium term, and into other usual forms of insurance, * * *. (June 2, 1926, c. 449, 44 Stat. 686.)

SEC. 304. In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) hereafter made may be approved if made within one year after the passage of this amendatory Act or within two years after the date of lapse or cancellation: *Provided,* That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further,* That the applicant during his lifetime submits proof satisfactory to the director showing that he is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the reinstatement of the United States Government life insurance (converted insurance), the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum, compounded annually, on each premium from the date said premium is due by

the terms of the policy: *Provided further,* That where within one year of this amendatory Act all of the requirements for reinstatement of yearly renewable term insurance under this section are complied with, except the payment of unpaid premiums with interest, and proof satisfactory to the director is furnished showing the applicant is unable to pay such premiums with interest or some part thereof, the application may be approved, and the amount of unpaid premiums with interest as provided in this section shall be placed as an interest-bearing indebtedness against the insurance, such indebtedness to bear interest at the rate of 5 per centum per annum, compounded annually, to be deducted in any settlement thereunder: *And provided further,* That no yearly renewable term insurance shall be reinstated after July 2, 1927. (July 2, 1926, c. 723, sec. 15, 44 Stat. 799.)

SEC. 307. All such policies of insurance heretofore or hereafter issued shall be incontestable after the insurance has been in force six months from the date of issuance or reinstatement, except for fraud or nonpayment of premiums and subject to the provisions of section 23: *Provided,* That a letter mailed by the bureau to the insured at his last known address informing him of the invalidity of his insurance shall be deemed a contest within the meaning of this section: *Provided further,* That this section shall be deemed to be in effect as of April 6, 1917. (June 7, 1924, c. 320, 43 Stat. 627.)

This section was amended by the Act of July 3, 1930, c. 849, sec. 24, 46 Stat. 1001–1002, to provide:

All contracts or policies of insurance heretofore or hereafter issued, reinstated,

or converted shall be incontestable from the date of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and subject to the provisions of section 23: *Provided,* That the insured under such contract or policy may, without prejudicing his rights, elect to make claim to the bureau or to bring suit under section 19 of this Act on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy: *Provided further,* That this section shall be deemed to be effective as of April 6, 1917, and applicable from that date to all contracts or policies of insurance.

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